

Internal Revenue Service

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Washington, DC 20224

Third Party Communication: None

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Person To Contact:

, ID No.

Telephone Number:

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CC:CORP:B06

PLR-112381-08

Date:

April 25, 2008

Legend

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Firm =

Acquirer =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Year 6 =

Year 7 =

Year 8 =

Year 9 =

Month 1 =

Date 1 =

Date 2 =

Dear :

This letter responds to your request for a ruling, dated March 13, 2008, submitted by your authorized representatives, requesting a determination, under Treas. Reg. § 1.1502-75(b)(2), that Sub 1, Sub 2 and Sub 3 have each joined in the making of the initial consolidated return filed by Parent for the Year 1 taxable year. The information submitted in that request is summarized below.

SUMMARY OF FACTS

Parent corporation for years prior to Year 1 (a calendar year) owned no subsidiaries and as a stand-alone entity filed corporate Federal income tax returns. During Year 1, Parent acquired all of the stock of Sub 1 and formed Sub 2 and Sub 3. Parent for this Year 1 taxable year timely filed a consolidated Federal income tax return with Sub 1, Sub 2 and Sub 3 (hereinafter referred to as the "Parent Group"). That tax return included the income and deductions of Parent for its entire Year 1 taxable year as well as the income and deductions of Sub 1, Sub 2 and Sub 3 for the period that each was a member of the Parent Group during that year. That tax return also included the requisite Form 851 (Affiliations Schedule) that identified Sub 1, Sub 2 and Sub 3 as subsidiaries of the Parent Group. In addition, that tax return included Forms 1122 (Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Return) for each of Sub 1, Sub 2 and Sub 3 for such Parent Group. Parent filed a consolidated Federal income tax return for each of the Group's subsequent calendar taxable years (Year 2, Year 3, Year 4, Year 5, Year 6, Year 7 and Year 8) as well as for the short taxable year beginning on Date 1 and ending on Date 2 (The calendar taxable years Year 1 through and including Year 8 as well as the short taxable year beginning on Date 1 and ending on Date 2 are hereinafter collectively referred to as the "Relevant Taxable Years"). During the Relevant Taxable Years, other corporations either joined

or left the Parent Group. For each of these years, the affiliated group of which Parent was the parent will be referred to the "Parent Group."

On Date 2, Acquirer, through a lower-tier subsidiary, acquired all of the stock of Parent. If the Parent Group is determined to have properly filed consolidated Federal income tax returns, this acquisition would be treated as terminating the Parent Group as of that date. During Month 1 of Year 9 (which occurred after Date 2), Firm undertook an analysis of the Parent Group on behalf of Acquirer and discovered that none of the corporations, i.e., Sub 1, Sub 2 and Sub 3, had signed the Forms 1122 which had been submitted with the consolidated Federal income tax return filed by the Parent with respect to Year 1.

REPRESENTATIONS

(a) Except for the failure to file properly executed Forms 1122 with the Parent Group's Year 1 consolidated Federal income tax return, Parent would have properly filed a consolidated Federal income tax return that included all of the Parent Group's members starting with their Year 1 consolidated return year.

(b) Had the Forms 1122 filed with the Parent Group's Year 1 consolidated Federal income tax return been properly executed, the Parent Group's members would have validly elected to file a consolidated Federal income tax return for the Year 1 taxable year.

(c) For the Relevant Taxable Years, the members of the Parent Group reported or intend to report (in the case of returns not yet required to be filed) all of their income and expenses during their period of inclusion in the Parent Group on a timely filed consolidated Federal income tax return for the Parent Group, and none of their items for this period were reported or will be reported (in the case of returns not yet required to be filed) on separate income tax returns.

(d) For the Relevant Taxable Years, all of the members of the Parent Group (except for dormant subsidiaries) were included or will be included (in the case of returns not yet required to be filed) on the Form 851 attached or to be attached to the consolidated Federal income tax returns filed by the Parent Group.

(e) Had the Parent Group's consolidated Federal income tax return been properly filed for its Year 1 taxable year, no change in Federal income tax liability would have occurred in any Parent Group consolidated return year relative to the liability stated in the consolidated Federal income tax returns actually filed.

APPLICABLE LAW

Treas. Reg. § 1.1502-75(a)(1) provides, in part, that an affiliated group of corporations which did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation which has been a member of the group during any part of the taxable year for which the consolidated return is to be filed consents to the regulations under section 1502, in accordance with § 1.1502-75(b)(1).

Treas. Reg. § 1.1502-75(a)(2) provides that a group which filed (or was required to file) a consolidated return for the immediately preceding taxable year is required to file a consolidated return for the taxable year, unless it has been granted permission by the Commissioner to discontinue filing consolidated returns pursuant to § 1.1502-75(c).

With regard to the consent of a corporation for a group's first consolidated year, § 1.1502-75(b)(1) provides, as a general rule, that the consent of a corporation shall be made by such corporation joining in the making of the consolidated return for such year and that a corporation shall be deemed to have joined in the making of such return for such year if it files a Form 1122 in the manner specified in § 1.1502-75(h)(2).

Treas. Reg. § 1.1502-75(h)(2) provides that if, under the provisions of § 1.1502-75(a)(1), a group wishes to file a consolidated return for a taxable year, a Form 1122 must be executed by each subsidiary. This regulation provides rules for properly executing Forms 1122 and attaching them to a consolidated return, and also provides that Form 1122 is not required for a taxable year if a consolidated return was filed (or was required to be filed) by the group for the immediately preceding taxable year.

Treas. Reg. § 1.1502-75(b)(2) provides that if a member of the group fails to file Form 1122, the Commissioner may under the facts and circumstances determine that such member has nevertheless joined in the making of a consolidated return by such group. Factors that the Commissioner will take into account in making this determination include the following: (i) Whether or not the income and deductions of the member for such taxable year were included in the consolidated return; (ii) Whether or not a separate return was filed by the member for that taxable year; and (iii) Whether or not the member was included in the affiliations schedule, Form 851, for such taxable year.

Where the Commissioner, under the facts and circumstances, determines that the member has joined in the making of the consolidated return, such member will be treated for purposes of § 1.1502-75(h)(2) as if it had filed a Form 1122 for such year. Treas. Reg. § 1.1502-75(b)(2), flush language.

RULING

Based solely on the information submitted and the representations made, Parent, Sub 1, Sub 2 and Sub 3 are treated as having properly joined in the making of a consolidated Federal income tax return for the Year 1 taxable year and that the Parent

Group is required to file a consolidated Federal income tax return for each of the Relevant Taxable Years. Treas. Reg. § 1.1502-75(b)(2).

CAVEATS

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. As such, no opinion is expressed as to the tax treatment of the acquisition of Sub 1 or of any other subsidiary acquired during the Relevant Taxable Years.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Steven J. Hankin
Steven J. Hankin
Senior Technician Reviewer, Branch 6
(Corporate)

cc: